

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: April 20, 2005

Division: Growth Management

Bulk Item: Yes X No

Department: Marine Resources

Staff Contact: George Garrett

AGENDA ITEM WORDING:

Approval of a Contract between Monroe County and American Underwater Contractors to install 68 new mooring buoys and replace 81 aging mooring buoys in Key West per previous authorization of the Board of County Commissioners – August 18, 2004.

ITEM BACKGROUND:

The BOCC approved the utilization of CIAP grant funds for the purchase and installation (or replacement) of 149 mooring buoys in the City of Key West. The cost of the project is \$140,093.34 and is entirely grant funded.

PREVIOUS RELEVANT BOCC ACTION:

August 2004 – approval to expend CIAP grant funds

CONTRACT/AGREEMENT CHANGES:

New Contract

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: \$140,093.34

BUDGETED: Yes No

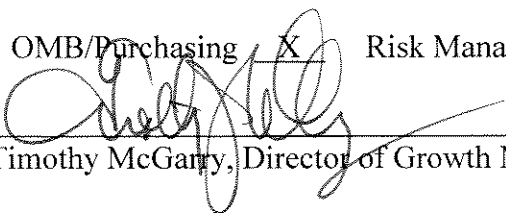
COST TO COUNTY: None

SOURCE OF FUNDS: CIAP grant

REVENUE PRODUCING: Yes No X **AMOUNT Per Month** **Year**

APPROVED BY: County Atty X OMB/Purchasing X Risk Management X

DIVISION DIRECTOR APPROVAL:


Timothy McGarry, Director of Growth Management

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM NO.:

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: American Underwater Contract # NA
 Effective Date: April 1, 2005
 Expiration Date: June 30, 2005

Contract Purpose/Description:

Contract to provide materials and install 149 mooring buoys in Key West

Contract Manager: George Garrett 2507 Marine Resources / 11
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on March 16, 2005 Agenda Deadline: February 28, 2005

CONTRACT COSTS

Total Dollar Value of Contract: \$ _____ Current Year Portion: \$ \$140,093.34
 Budgeted? Yes ☒ No ☐ Account Codes: 125-53012-530490-6W0203-530340
 Grant: \$ \$140,093.34 157-162606-530340-
 County Match: \$ None _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ NA/yr For: NA
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>4/1/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>4/1/05</u>
Risk Management	<u>3-1-05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3-1-05</u>
O.M.B./Purchasing	<u>3/1/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/1/05</u>
County Attorney	<u>3/2/05</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/1/05</u>

Comments: substitute new contract with effective date 8/4/04.

CONTRACT FOR SERVICES

THIS CONTRACT is entered into this 20th day of April, 2005, by MONROE COUNTY, a political subdivision of the State of Florida, whose address is the Marathon Government Center, 2798 Overseas Highway, Marathon, Florida 33050, hereafter the "County," and American Underwater Contractors, Inc. 17536 SE Conch Bar Ave., Tequesta, FL 33469, hereafter "AUC" or the "Contractor."

Section 1. AUC and the County, for the consideration named agree as follows:

1. AUC will provide and assemble, and install new hardware, equipment and materials for 68 mooring systems and provide, assemble, and install replacement hardware for 81 mooring systems as outlined in the attached Scope of Work, Attachment A.
2. AUC will deliver all the described products to the City of Key West. All materials must be delivered by June 30, 2005.

Section 2. The Contractor may invoice for materials prior to installation of the buoys shown in Attachment A. The amount of all materials is \$107,598.18. The total amount of the Contract is \$140,093.34. Upon receipt of an invoice the County agrees to pay up to the total amount of \$140,093.34. Payment will be based on a determination by the Director of Marine Resources or his designee that all products and have been provided and delivered in accordance with the Scope of Work in Attachment A and meet the satisfaction of Department staff. The County will process invoices from AUC within 30 days of receipt.

Section 3. Contract Termination. Either party may terminate this Contract because of the failure of the other party to perform its obligations under the Contract. If the County terminates this Contract because of the AUC's failure to perform, then the County must pay

the AUC the amount due for all work satisfactorily completed as determined by the County up to the date of the AUC's failure to perform but minus any damages the County suffered as a result of the AUC's failure to perform. The damage amount must be reduced by the amount saved by the County as a result of the Contract termination. If the amount owed the AUC by the County is not enough to compensate the County, then the AUC is liable for any additional amount necessary to adequately compensate the County up to the amount of the Contract price.

Section 4. Records. AUC shall maintain all books, records, and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles consistently applied. Each party to this Agreement or their authorized representatives shall have reasonable and timely access to such records of each other party to this Agreement for public records purposes during the term of the Agreement and for four years following the termination of this Agreement. If an auditor employed by the County or Clerk determines that monies paid to AUC pursuant to this Agreement were spent for purposes not authorized by this Agreement, the AUC shall repay the monies together with interest calculated pursuant to Sec. 55.03, FS, running from the date the monies were paid to AUC.

Section 5. Employees Subject to County Ordinance Nos. 010 and 020-1990. The AUC warrants that it has not employed, retained, or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of Ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 020-1990. For breach or violation of this provision, the County, in its discretion, may terminate this Contract without liability and may also, in its discretion, deduct from the Contract or

purchase price, or otherwise recover the full amount of any fee, commission, percentage gift, or consideration paid to the former County officer or employee.

Section 6. Convicted Vendor List. A person or affiliate who has been placed on the convicted vendor list following a conviction for public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not perform work as a contractor, supplier, subcontractor, or AUC under contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 of the Florida Statutes, for the Category two for a period of 36 months from the date of being placed on the convicted vendor list.

Section 7. Insurance. Prior to execution of this agreement, the CONTRACTOR shall furnish the County Certificates of insurance indicating the following coverages or in excess thereof (Attachment 2):

- Workers Compensation in the amount of statutory limits as specified in Florida Statutes 440.
- Employers Liability with:
 - \$100,000 Bodily Injury by Accident;
 - \$500,000 Bodily Injury by Disease, policy limits; and
 - \$100,000 Bodily Injury by Disease, each employee.
- General Liability (Premises operations, blanket contractual, expanded definition of property damage, products & completed operations, personal injury) with:
 - \$100,000 per Person;
 - \$300,000 per occurrence; and

\$50,000 property damage.

Or 300,000 combined single limit.

- **Vehicle Liability with:**

\$50,000 per Person;

\$100,000 per occurrence;

\$25,000 property damage;

Or \$100,000 combined single limit.

Section 8. Communication Between Parties. All communication between the parties should be through the following individuals or their designees:

Monroe County
George Garrett, Director
Department of Marine Resources
2798 Overseas Highway
Marathon, FL 33050

AUC
David Foster
American Underwater Contractors, Inc.
17536 SE Conch Bar Ave.
Tequesta, FL 33469

Section 9. Governing Law, Venue, Interpretation, Costs, and Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

Section 10. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and AUC agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

Section 11. The County and AUC agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

Section 12. Severability. If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and AUC agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

Section 13. Attorney's Fees and Costs. The County and AUC agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

Section 14. Binding Effect. The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and AUC and their respective legal representatives, successors, and assigns.

Section 15. Authority. Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

Section 16. Claims for Federal or State Aid. The AUC and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

Section 17. Adjudication of Disputes or Disagreements. The County and AUC agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within 30 days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

Section 18. Cooperation. In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and AUC agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and AUC specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

Section 19. Nondiscrimination. County and AUC agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by

a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or AUC agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

Section 20. Covenant of No Interest. County and AUC covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

Section 21. Code of Ethics. County agrees that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

Section 22. No Solicitation/Payment. The County and AUC warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of the provision, the AUC agrees that the County shall have the right to terminate this Agreement without liability and, at its discretion, to offset from monies owed, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 23. Public Access. The County and AUC shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or

received by the County and AUC in conjunction with this Agreement; and the County shall have the right to unilaterally cancel this Agreement upon violation of this provision by AUC.

Section 24. Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the County and the AUC in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

Section 25. Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County, when performing their respective functions under this Agreement within the territorial limits of the County shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the County.

Section 26. Legal Obligations and Responsibilities. Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County, except to the extent permitted by the Florida constitution, state statute, and case law.

Section 27. Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the AUC agree that neither the County nor the AUC or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general or for the purposes contemplated in this Agreement.

Section 28. Attestations. AUC agrees to execute such documents as the County may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

Section 29. No Personal Liability. No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County in his or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

Section 30. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

Section 31. Section Headings. Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are

not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

Section 32. Indemnify/Hold Harmless. Contractor agrees to indemnify and save County harmless from and against all claims and actions and expenses incidental thereto, arising out of damages or claims for damages resulting from the negligence of Contractor, its agents, or employees while Contractor is cleaning the Airport facilities. However, Contractor shall not be liable for any claims, actions or expenses which arise from the negligent or intentional acts or omissions of the County, its agents or employees. The extent of liability is in no way limited to, reduced, or lessened by the insurance requirements contained elsewhere within this agreement.

Section 33. The effective date of this Contract is 18 August, 2004, in compliance with the funding use approved August 18, 2004.

IN WITNESS WHEREOF each party hereto has caused this Agreement to be executed by its duly authorized representative.

(SEAL)
Attest: DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

(SEAL)
Attest:

AMERICAN UNDERWATER CONTRACTORS

By: _____
Title: _____

By: _____
Title: _____

APPROVED AS TO FORM.

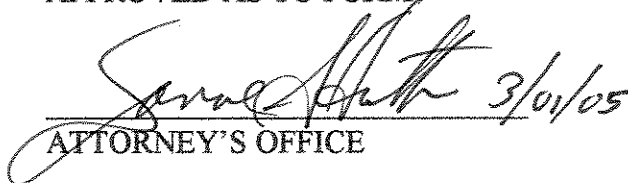
 3/01/05
ATTORNEY'S OFFICE

EXHIBIT A

Scope of Work – Materials Requirements

Scope of Work
for
Providing/Delivering 496 Mooring Systems

Monroe County is assisting the City of Key West with it's mooring field project by funding the purchase of 149 mooring systems (hardware, materials, etc.) for the next expansion of the City of Key West mooring field.

AUC shall provide materials, supplies and all necessary hardware for 149 total mooring systems as per the following specifications (note that the pennants and downlines shall be assembled):

- 149 Helmken Rock Cutting Multi-Helix anchors- 1 3/4" square x 10' long, 100,000 lb. tensile strength;
- 149 Helmken heavy-duty mooring anchor termination heads;
- 596 feet of 1 1/2" red heavy duty chafing hose (as per attached specifications);
- 1200 feet of 1" premium nylon through-buoy rope;
- 298 7/8" galvanized screw pin bow shackles;
- 149 1" galvanized eye-to-eye swivels;
- 149 1 1/4"x10' (total finished length) StormSoft downline assemblies, including: hard plastic float and heavy duty galvanized thimbles;
- 149 premium 1" nylon three strand twisted white rope (tensile strength 22,600 lb.) 10' (total finished length) pennant assemblies (see attached diagram), including: 2' of red heavy-duty chafing hose (as per attached specifications) installed on top eye splice, red pennant float (as per attached specifications) to be installed on pennant line next to top eye splice, and an eye splice on bottom (without hose).
- 149 18" mooring buoys (as per attached specifications)

Additional Equipment/Supplies Specifications

Heavy-duty chafing hose:

Red air/water hose, model #HARG1D200, 1 1/4" ID, 200 psi

Pennant float:

Expanded polyvinyl chloride, oval shaped, high density, red, 4 1/4" diameter, 5 1/8" height, hole 7/8", buoyancy 1 lb. 11 ounces.

Mooring Buoy:

Model #EMI-18, 18" spherical buoy, polyethylene shell with u/v inhibitors, roto-molded, closed cell 2 lb. polyurethane foam-filled flotation, through-buoy 1" diameter pipe with protective flange bushing attached, true white standard color, striped with 3M heavy-duty blue reflective tape, exceeds USCG requirements.